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 Joseph Norita Camacho

1 **FOR PUBLICATION**

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 3
 4 **IN THE SUPERIOR COURT**
 5 **OF THE**
 6 **COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

7 **THE ESTATE OF**) Civil Action No. 04-0431
 8 **GUILLERMO R. KILELEMAN,**)
 9) **ORDER FINDING ADMINISTRATRIX'S**
 10 **Deceased.**) **THIRTEEN-YEARS OF INACTION TO**
 11) **CLOSE THE PROBATE "UNLESS THE**
 12) **HEIRS PAY IN ORDER TO INHERIT"**
 13) **CONFLICTS WITH HER FIDUCIARY**
 14) **DUTIES TO THE ESTATE THEREFORE**
 15) **SHE IS NOT THE BEST PERSON TO**
 16) **ADMINISTER THE ESTATE AND**
 17) **PURSUANT TO NMI R. PROB. P. 18 SHE**
 18) **IS REMOVED AS THE**
 19) **ADMINISTRATRIX**
 20)
 21)

22 **I. INTRODUCTION**

23 This matter came before the Court for a hearing on Petitioner Adoracion Kileleman Hix's
 24 ("Hix") Petition to Substitute Administratrix on June 6, 2019. Attorney Benjamin K. Petersburg
 represented Hix, who was present. Attorney Joaquin DLG Torres represented Administratrix
 Arcelia Kileleman Cody ("Cody"). The Court heard testimony from Administratrix Arcelia
 Kileleman Cody.

On February 22, 2019, Petitioner Hix filed her Petition to Substitute Administratrix. On
 April 3, 2019, Administratrix Cody filed her Opposition to Adoracion (sic) Hix's Petition to
 Substitute Administratrix. On May 7, 2019, Petitioner Hix filed her Response to Opposition to

By order of the Court, Associate Judge Joseph N. Camacho

1 Petition to Substitute Administratrix. On June 4, 2019, Administratrix Cody filed her
2 Administratrix's Reply to Hix's Response. Only Cody testified at the June 6, 2019 hearing.

3 Having reviewed the parties' submissions, all testimony, the applicable statutes, rules, and
4 case law, the Court issues this Order Removing Administratrix Arcelia Kileleman Cody as
5 Administratrix.

6 II. FINDINGS OF FACT

- 7 1. On September 1, 1992, Guillermo R. Kileleman died.
- 8 2. On September 13, 2004, Arcelia Kileleman Cody filed her Petition for Letters of
9 Administration for the Estate of Guillermo R. Kileleman.
- 10 3. Cody is the decedent's daughter.
- 11 4. Cody was appointed as the administratrix of the estate on July 27, 2006.
- 12 5. Since Cody's appointment as Administratrix, she has not: filed an inventory of the estate,
13 moved for partial distribution, petitioned for final distribution of the Estate, or brought any
14 matters to the Court that may have provided cause or reasons for the delay.
- 15 6. Petitioner Adorasion Kileleman Hix is a daughter of the decedent, a sister of Cody, and
16 named as an heir on the Petition filed by Cody.
- 17 7. On February 22, 2019, Hix filed her Petition to Substitute Administratrix based on Cody's
18 neglect of the Estate.
- 19 8. On June 6, 2019, the Court held an evidentiary hearing on the Petition to Substitute
20 Administratrix; and Cody was called to the witness stand and testified under oath.
- 21 9. Cody admitted that she has not filed anything with the Court since she was appointed as
22 Administratrix in 2006.
- 23 10. Cody admitted that she has not taken any action with regard to this Estate since 2009.

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1 11. The assets of the Estate consist of real property: Lot 218-1 and a disputed interest in Lot
2 218-2. The Estate has no cash assets. No creditors have made a claim against the Estate.

3 12. Cody testified that she spent a total of approximately \$25,000.00 of her personal money on
4 funeral expenses, the construction of an access road on Lot 218-1, the surveying of Lot
5 218-1, and other expenses involving the Estate and its assets.

6 13. Cody testified that she has not moved the Court to distribute the Estate property to the heirs
7 because she expects the heirs of Guillermo R. Kileleman to “pay their fair share” of Cody’s
8 expenses before they can receive their share of the property.

9 14. Cody testified that she does not want reimbursement from the Estate, but that it should
10 come from the children of Guillermo R. Kileleman.

11 III. LEGAL STANDARD

12 In a probate matter, “[t]he administratrix’s responsibilities include filing an inventory of the
13 estate within 60 days of appointment, taking possession of the estate and its debts, paying the debts
14 of the estate with the court’s consent, maintaining awareness of prior or pending court matters that
15 conflict with the proposed distribution, petitioning for the court’s permission before making any
16 payments or distributions from the estate, fulfilling instructions and orders of the Court, fulfilling
17 the notice requirements for creditor claims, and fulfilling the requirements for final distribution of
18 the estate.” *In the Matter of the Estate of Angelina Borja Peredo, aka Angelina P. Rios*, Civ. No.
19 16-0252 (NMI Super. Ct. August 3, 2017) (Order Vacating Conditional Appointment of Co-
20 Administratrix at 4) (hereinafter “*Peredo Order*”); NMI R. PROB. P. 9-11, 19-22.

21 “An administratrix who is a participant in a probate proceeding owes a fiduciary duty of
22 fair dealing to the other participants analogous to the duty of a trustee.” *Peredo Order* at 4 (citing
23 *Piteg v. Piteg*, 2000 MP 3 ¶ 18). Further, the administratrix owes a duty of loyalty to the estate and
24 shall act as a “prudent person dealing with the property of another, one who is required to act with

1 care, diligence, integrity, fidelity, and sound business judgment.” *Peredo* Order at 4 (quoting *In re*
2 *the Matter of the Estate of Elias S. Wabol*, Civ. No. 86–0791 (NMI Super. Ct. Aug. 3, 1998)
3 (Decision and Order at 8) (hereafter “*Wabol* Order”). When an administratrix’s own interests are
4 in conflict with those of the estate and hinder the distribution process, she should not be appointed.
5 *Peredo* Order at 6.

6 IV. ANALYSIS

7 The Court finds that Cody as Administratrix has failed to satisfy the standards imposed by
8 the NMI Rules of Probate Procedure and her fiduciary duties towards the Estate. Therefore, for the
9 reasons stated below, Cody is hereby ordered removed as the Administratrix of the Estate.

10 Cody had a duty as Administratrix pursuant to NMI R. PROB. P. 9 and 19 to file an
11 inventory of the estate within sixty (60) days of her appointment. However, Cody has been the
12 Administratrix for thirteen-years without filing an inventory.

13 Additionally, Cody violated of her duty to act with care and diligence towards the Estate by
14 failing to file for distribution of any estate assets within the thirteen-years she has been
15 Administratrix. *See Peredo* Order at 4 (quoting *Wabol* Order at 8). Cody testified that she had not
16 taken any action regarding the Estate since 2009 and has not filed anything with the Court since
17 her appointment that would explain why she has not moved the estate towards closure. Instead,
18 Cody testified that she would not distribute any estate property to the heirs until the heirs “pay their
19 fair share.” This conduct does not reflect the care and diligence that is required of an administratrix
20 in a probate case because: failing to distribute the property in thirteen years, under these facts, is
21 unreasonably long; and there are no provisions in the probate code or the Rules of Probate
22 Procedure that allow an Administratrix to withhold the distribution of estate assets until the
23 individual heirs pay money to the Estate or to the Administratrix before an heir can receive his or
24 her inheritance.

1 Furthermore, even if some or all of Cody's expenses are determined to be reasonable, Cody
2 could only be entitled to reimbursement from the Estate, not from the individual heirs. 8 CMC §
3 2925(a)(1); *In re Estate of Barcinas*, 2 NMI 437, 449 (1992).

4 Additionally, Cody's insistence that the heirs "pay their fair share" prior to receiving
5 Estate assets violates her duty of loyalty towards the Estate. By withholding the Estate assets from
6 being distributed to the heirs until such time as the heirs pay money to the Estate or to Cody for
7 reimbursement for the money Cody claims to have spent on behalf of the Estate¹, Cody is putting
8 her own interests in conflict with those of the Estate and the proper distribution process. This is
9 grounds to deny the appointment of an administratrix or, as in this particular case, for the removal
10 of the administratrix. *See Peredo* Order at 6.²

11 Because of Cody's failure to follow the Rules of Probate Procedure and adhere to her
12 fiduciary duty to the Estate, Cody must be removed as Administratrix.

13 **V. CONCLUSION**

14 The Court **FINDS** that Administratrix Arcelia Kileleman Cody's thirteen-years of inaction
15 has resulted in a failure to close the probate; and furthermore, Administratrix Arcelia Kileleman
16 Cody's decision to not distribute Estate assets "unless the heirs pay in order to inherit" conflicts
17 with her fiduciary duty as Administratrix of the Estate.

18 **THEREFORE**, Administratrix Arcelia Kileleman Cody is not the best person to
19 administer the Estate and pursuant to NMI R. PROB. P. 18 she is removed as the Administratrix.³

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23 ¹ Cody estimates that she spent approximately \$25,000.

24 ² The proper course of action is to file an inventory noting the costs and expenses, and to seek reimbursement at the time of final distribution. 8 CMC § 2925, NMI R. PROB. P. 12, 22.

³ The Court will issue a separate order appointing an interim administratrix.

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IT IS SO ORDERED this 20th day of August, 2019.


/s/ _____
JOSEPH N. CAMACHO, Associate Judge